

HENRY CHAVEZ

IBLA 81-258

Decided March 19, 1982

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring five placer mining claims abandoned and void. NM MC 82420 through NM MC 82422, NM MC 82426, and NM MC 82428.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Under sec 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

APPEARANCES: James T. Martin, Jr., Esq., Las Cruces, New Mexico, for appellant; John H. Harrington, Esq., Office of the Solicitor, Southwest Region, Sante Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Henry Chavez has appealed from a decision of the New Mexico State Office, dated December 18, 1980, which declared the Chavez Nos. 5 through 7, 19, and 21 placer mining claims NM MC 82420 through NM MC 82422, NM MC 82426, and NM MC 82428 abandoned and void for failure to file evidence of assessment work for the claims on or before October 22, 1979. 1/

1/ The claims involved are as follows:

<u>Serial Numbers</u>	<u>Claim Name</u>	<u>Located</u>	<u>Original Claim Name</u>
NM MC 82420	Chavez No. 5	4-3-1965	Roof Color Material No. 2
NM MC 82421	Chavez No. 6	4-3-1965	Roof Color Material No. 1
NM MC 82422	Chavez No. 7	4-3-1965	Roof Color Material No. 3
NM MC 82426	Chavez No. 19	4-9-1965	Roof Color Material No. 5
NM MC 82428	Chavez No. 21	4-9-1965	Roof Color Material No. 6

Appellant's mining claims were located in 1965 and filed for recordation with BLM on October 22, 1979. On October 22, 1979, appellant also filed proof of labor for different unpatented mining claims known and recorded by the name of Alvarez and Chavez Roofing Material Company claims 1 through 8, 19, 20, and 21. Since this proof of labor did not pertain to the five recorded claims, BLM issued its decision declaring the claims abandoned and void.

Appellant contends, inter alia, in his statement of reasons that he originally located 31 claims in four groups which are overlapping and duplicative. He claims that he has worked and filed proofs of labor on these claims since 1968. He asserts that although some of his proofs of labor did not have all the 31 claims names on them, the work that was done and the proofs submitted to BLM covered the 5 claims in question. In its answer, the Office of the Solicitor, counsel for BLM, asserts that the claims were properly declared void because appellant failed to comply with the recordation provisions of FLPMA.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of unpatented mining claims located on or before October 21, 1976, to file a copy of the official record of the notice of location of the mining claim and evidence of assessment work with the proper office of BLM within 3 years after October 21, 1976, and further provides that failure to file any instrument thus required within the prescribed time period shall be deemed conclusively to constitute an abandonment of the mining claim. The regulations in 43 CFR 3833.1, 3833.2, and 3833.4 replicate the statutory requirements and consequences. This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

The case record shows that appellant filed proof of labor on October 22, 1979, for the claims listed as the Alvarez and Chavez Roofing Material Company claims 1 through 8, 19, 20, and 21. The BLM records show that these referenced claims were part of a group of appellant's claims which were located after the segregative date of the NMSU College Ranch withdrawal (NM 0559044) and were declared null and void by BLM decision of September 8, 1980. Although appellant contends his proof of labor citing these claims should also benefit the five Chavez claims at issue, the proof of labor does not refer to the Chavez claims, nor is there any evidence identifying this proof for that purpose. 2/

BLM is not required to search the public records in an attempt to determine the intent of a mining locator. The mining claimant must bear the burden of clearly marking proof of labor for the correct claims

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2/ BLM did prepare a mineral investigation report on the history of all of appellant's claims, and based on county mining records, concluded that each was a distinct claim. The records showed that affidavits of assessment were filed for the claims at issue between 1966 and 1972.

involved. Appellant either inadvertently failed to file proofs of labor for his Chavez (Roof Color Material) claims or mistakenly referred to them as Alvarez and Chavez Roofing Material claims. Since proof of labor was not specifically filed for the five Chavez claims, the claims were properly declared abandoned and void.

Appellant also contends that he intended to hold the claims and he submitted a signed statement to that effect to BLM. The notice of intention to hold filed with BLM must be "an exact legible reproduction or duplicate [of the instrument] \* \* \* filed for record \* \* \* in the local jurisdiction of the State where the claim is located and recorded." 43 CFR 3833.2-3; see Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981); Pacific Coast Mines, Inc., 53 IBLA 200 (1981). As in this case where the notice clearly is not a copy of a notice of intention to hold filed in the local recording office, as required by the terms of the statute, a claim is properly declared abandoned and void. Pacific Coast Mines, Inc., *supra* at 202.

Finally, appellants also request an evidentiary hearing pursuant to 43 CFR 4.415. Under that regulation it is within the discretion of the Board to grant a hearing on issues of facts, but in order to warrant such a hearing, an appellant must allege facts which, if proved, would entitle him to the relief sought. Stewart Capital Corp., 53 IBLA 369 (1981). Under the circumstances of this case, due process requirements are satisfied by this appeal. Rupert Thorne, 58 IBLA 319 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

